

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

BENJAMIN McCHESNEY,

Plaintiff,

vs.

MARK ERREBO,

Defendant.

Cause No. CV 11-14-BLG-RFC-CSO

FINDINGS AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE TO
REMAND TO STATE COURT

On February 15, 2011, this Court issued an Order to Show Cause why this matter should not be remanded to state court for lack of subject matter jurisdiction. Although Defendant Mark Errebo did not concur with the Court's analysis, he stated that he “does not object to the remand of the case to Yellowstone County District Court.” *Court Doc. 7 at 2*. Plaintiff Ben McChesney did not respond to the Court's Order.

Accordingly, for the reasons set forth in the Court's Order of

February 15, 2011 (*Court Doc. 4*), the Court finds there is no basis for subject matter jurisdiction and therefore issues the following:

RECOMMENDATION

This matter should be remanded to Yellowstone County District Court and the Clerk of Court should be directed to send a certified copy of the Order of Remand to the Clerk of Court for Yellowstone County, Montana.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND
CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to these Findings and Recommendations within fourteen (14) days of the date entered as indicated on the Notice of Electronic Filing. As this deadline allows a party to act after the Findings and Recommendations is served, it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire. Any such filing should be captioned "Objections to Magistrate Judge's Findings and Recommendations."

A district judge will make a de novo determination of those

portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge and may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED this 21st day of March, 2011.

/s/ Carolyn S. Ostby
United States Magistrate Judge